(7)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

W.P.NO. 758 OF 1995

PETITIONER — R.K.DEWANGAN son of Pyarelal Dewangan aged years, Upper Division Clerk, Raipur Distt. Fish Farmers' Agency, Raipur resident of Brahmanpara Raipur.

VERSUS

RESPONDENTS

1. RAIPUR DISTT. FISH FARMER'S DEVELOPMENT AGENCY, RAIPUR through its Chairman and Collector, Raipur , H.O. Collectorate, Raipur.
2. CHIEF EXECUTIVE OFFICER, RAIPUR DISTRICT FISH FARMERS AGENCY, RAIPUR H.O. Collectorate, Raipur.
3. THE DIRECTOR OF MATSYODHOG, Madhya Pradesh, Bhopal
4. THE GOVERNMENT OF MADHYA PRADESH through Secretary Krishi (Pashu Chikitsa) Vibhag, Bhopal.

PETITION UNDER ART. 226 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT OR ORDER OR DIRECTION IN THE NATURE OF WRIT ETC.

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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No. 758 of 1995

Petitioner : R. K. Dewangan

Versus

Respondents : Raipur District, Fish Farmer's Development Agency others

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri S. P. Sharma, Advocate for the Petitioner.

None for the respondents No. 1 and 2.

Shri V. V. S. Moorthy, Deputy Advocate General with Shri I. N. Shrivastava, Panel lawyer for the respondents No. 3 and 4.

ORAL ORDER

(22nd August, 2006)

1. The petitioner was initially appointed as Clerk-cum- Typist (Lower Division Clerk) in the pay scale of Rs. 169-300 vide order dated 31.1.1974 (Annexure P/2). Thereafter the petitioner was promoted on the post of Upper Division Clerk (U.D.C.) in the pay scale of Rs. 975-1450 vide order dated 20.3.1989 (Annexure P/7). The petitioner continued on the post of U.D.C. till 28th February, 1995, when he was reverted to the post of L.D.C. vide order dated 28.2.1995 (Annexure P/12).

2. Shri S. P. Sharma, learned counsel appearing for the petitioner submits that the impugned order dated 28.2.1995 visits with civil consequences and since the same was passed without following the principles of natural justice and without affording any opportunity of hearing to the petitioner, the order deserves to be quashed on the simple ground that the order is vitiated on account of non-compliance of the principles of natural justice and fair play in action. It is further contended that under the provisions of the Madhya Pradesh Government Servants (Temporary & Quasi-Permanent Service) Rules,

1960 (for short 'the Rules, 1960'), which has been adopted by the State of Chhattisgarh, the petitioner had acquired the quasi permanent status in service under Rule 3 A on having completed five years' temporary service on the post of U.D.C. The service of the petitioner could not have been terminated on any other ground, except, by strictly following the principles of natural justice and fair play in action.

3. Despite several notices to the respondents No. 1 to 2 i.e. Raipur District Fish Farmer's Development Agency, Raipur and Chief Executive Officer, Raipur District Fish Farmers Agency, Raipur, none appeared on their behalf. However, the reply on behalf of the respondents No. 1 to 3 was filed on 12.4.1995. In the reply the plea of the respondents No. 1 and 2 is that there should be a clear declaration of quasi permanent status under Rule 3 and 3 A of the Rules, 1960. It is admitted by the respondents No. 1 and 2 that the said Rules are applicable, as it is not the case of the respondents No. 1 and 2 that the said Rules are not applicable to the petitioner. It was further stated in the written submissions that since there was no vacancy on the post of U.D.C. the services of the petitioner was reverted to the lower post.

4. Shri V. V. S. Moorthy, learned Deputy Advocate General, assisted by Shri I. N. Shrivastava, Panel Lawyer, appearing for the respondents No. 3 and 4 submits that this case has to be contested by the respondents No. 1 and 2 as the State i.e. Respondents No. 3 and 4 have no interest in the case and there is no grievance of the petitioner against the respondents No. 3 and 4.

5. On the question of applicability of Rule 3 of the Rules 1960, Shri Moorthy in his usual frankness and fairness submits that in the present case where the petitioner has completed 5 years of temporary

service, no declaration is necessary under Rule 3 A of the Rules 1960. Rule 3 of the Rules, 1960 is quoted hereunder:-

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"3. A Government servant shall be deemed to be in quasi-permanent service,-

(i) if he has been in temporary service in the same service or post continuously for more than three years; and

(ii) if the appointing authority being satisfied as to his suitability in respect of age, qualifications, work and character for employment in a quasi-permanent capacity, has issued a declaration to that effect, in accordance with such instructions as the Governor may issue from time to time.

[Explanation-In computing continuous temporary service for the purposes of this rule and period of break in service during a vacation shall be counted as a period of actual service where, upon re-employment immediately after the vacation, the Government servant has been allowed to draw his pay and allowances in respect of such period.]

***3A.** Government servant in respect of whom a declaration under clause (ii) of rule 3 has not been issued but has been in temporary service continuously for five years in a service or post in respect of which such declaration could be made shall be deemed to be in quasi-permanent service unless for reasons to be recorded in writing the appointing authority otherwise orders."*

***"3AA.** For the purpose of rules 3 and 3A, in the case of an appointment,-*

(a) where consultation with the Public Service Commission is not required, a service which a Government servant has rendered prior to his temporary appointment according to the provisions of the recruitment rules or any instructions issued by the Governor from time to time, shall not be counted for reckoning the completed three years or five years of service, as the case may be;

(b) where consultation with the Public Service Commission is required, a service which a Government servant has rendered prior to his selection by the Public Service Commission shall not be counted for reckoning the completed three years or five years of service, as the case may be."

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6. Having heard learned counsel for the parties and having perused the records appended to the petition and reply, it is evident that the impugned order was passed without following the principles of natural justice and fair play in action. It is well settled principle of law that any order which visits with civil consequences and prejudice the case of a government employee cannot be passed without affording the opportunity of hearing to the employee concerned. In the present case it is admitted position that no opportunity of hearing was afforded to the petitioner and as such the impugned order dated 28.2.1995 (Annexure P/12) is vitiated.

7. The Supreme Court in catena of decisions i.e. **H. L. Trehan and others Vs. Union of India & others** { (1989) 1 SCC 764} and **Bhagwan Shukla Vs. Union of India and others** (AIR 1994 SC 2480) has clearly observed that the reduction in rank, without show cause notice and without opportunity of hearing amounts to flagrant violation of the principles of natural justice. The Supreme Court in the case of **Gajanan L. Pernekar Vs. State of Goa and another** { (1999) 8 SCC 378} held that the benefit could not have been taken away without affording an opportunity of hearing.

8. For the reasons stated above the impugned order dated 28.2.1995 (Annexure P/12) is quashed.

9. With regard to the payment of arrears of wages, since the petitioner has not been working on the post of U.D.C., he is not entitled to full arrears of wages. However, in the facts and circumstance of the case when the impugned order was passed without following the principles of natural justice and the petitioner has been deprived of his rightful wages, the petitioner is entitled to 50% arrears of back wages with revisions in his pay scale as admissible in law.

10. The petition is accordingly allowed. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge